The Solicitors' Journal

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Current Topics.

Magistrates' Clerks.

IT is strange but true that though magistrates now deal with some 800,000 persons annually charged with offences and nearly 90 per cent. of the more serious offences, quite apart from their other extensive jurisdiction, the present system relating to clerks to justices depends on an Act of 1877. Some defects were shown in the report in 1934 of the Departmental Committee on Imprisonment for Debt, and these and other questions were frequently raised in Parliament in the years before the war. This is one of the outstanding facts emphasised by the recently published report of the committee on justices clerks appointed in April, 1938, by the then Home Secretary. The committee, consisting of The Right Honourable LORD ROCHE (chairman), Mr. ROLAND BURROWS, K.C., THE COUNTESS BUXTON, G.B.E., J.P., Mr. W. H. FOYSTER, Miss MARGERY FRY, J.P., Mr. S. W. HARRIS, C.B., C.V.O., THE LORD MERTHYR, J.P., Sir CECIL OAKES, C.B.E., Mr. LEO PAGE, J.P., Sir CLAUD SCHUSTER, G.C.B., C.V.O., K.C., and Mr. F. WEBSTER, was asked to inquire into the conditions of service of clerks to justices and their assistants, to report what changes, if any, are desirable in the law and practice and to make recommendations incidental to any such changes. In September, 1939, the committee had finished taking evidence and had discussed their recommendations, but the outbreak of war stopped further progress and they were not able to resume work until 1943. In the meantime LORD MERTHYR had become a prisoner of war; he had stated his views on some matters and these are given in the report. According to the report the present method of appointment is that the justices for each borough with a separate commission of the peace, and the justices for each county division appoint their own clerks. The result of this is a varying standard of efficiency and tendency to adhere too generally to the appointment of part-time clerks serving only one court. Whole-time appointments, it is stated, should be extended as new appointments are made, but in some areas it may be necessary to continue with part-time clerks. It is satisfactory if a part-time clerk holds such public appointments as county court registrar. Some public appointments, such as town clerk or clerk to an urban district council, are incompatible with a clerkship to justices. A part-time clerk who is in private practice as a solicitor should in future, it is recommended, be prohibited from certain kinds of solicitor's practice, such as licensing work, in the area served by his court. A considerable extension of the whole-time system can be made by combining two or more county divisions or combining divisions with boroughs for the purpose of creating areas of such size as would justify a whole-time clerk with a proper staff. Separate courts would continue to be held for the areas thus combined, subject, however, to a review of boundaries and attention to the convenient location of court houses. There is difficulty, it is stated, in securing satisfactory arrangements in small boroughs with separate commissions of the peace, and these should be abolished. The committee decided against a system of appointment by a department of the central government. LORD MERTHYR indicated that he would have been in favour of central control and it is evident from the memorandum of Sir CLAUD SCHUSTER, who signed the report, that he would have supported such a proposal. It is proposed that (*a*) in boroughs of 75,000 and over the justices should continue to appoint their clerk and should also appoint his staff and supervise the work of his office; and (*b*) a committee, called the magistrates' courts committee, should be set up for each county. This committee would consist of justices from the county divisions and smaller boroughs with separate commissions of the peace, and it would act as the appointing and controlling authority for the whole area. The committee would take over existing clerks and whole-time assistants on the lines of the arrangement now in force in Middlesex and make all future appointments of clerks and staff. The committee would prepare schemes for grouping divisions for the purpose of clerkships; the schemes would require the approval of the Home Secretary, who should have power to act in default. The boundaries of divisions and the location of court houses would be determined by the committee. Ordinarily the schemes would come into operation as vacancies occur, but there should be power to hasten the process by compensating existing clerks for loss of office.

Qualifications and Salaries.

THE present qualifications for appointment, the report states, are that a clerk should be a barrister of fourteen years standing, a solicitor, or have served as an assistant to a metropolitan police magistrate, or a stipendiary magistrate for seven years or, in special circumstances, have served as an assistant to a clerk to justices for fourteen years. "Special circumstances" are not defined and, although all appointments must be confirmed by the Home Secretary, this alone cannot ensure that suitable men are appointed. The great majority of clerks are solicitors. Clerks are the legal advisers of their justices, and the report states that they ought to have professional legal qualifications. Further, they should be acquainted with office routine and management, and also interested in and adequately informed about the treatment of offenders. On the legal qualifications, the committee agree as to the solicitor's qualifications, but as to barristers, while the majority of six members consider that barristers should continue to be eligible, four members think that eligibility should be confined to solicitors only. It may be observed here in parenthesis that The Law Society state that solicitors only should be appointed. The report itself admits that of 822 justices' clerks outside the metropolitan area, 748 are solicitors. The committee places emphasis on the fact that legal qualifications are not themselves sufficient. It is thought to be impossible to define in a statute the degree of experience that is desirable: this must be left to the appointing authority. Confirmation by the Home Secretary should continue, and it should be made clear that the Home Office must be given full information about candidates, and may properly refuse to confirm an appointment on the grounds that the best candidate has not been selected. Metropolitan police-court clerks should be brought into line with the qualifications applicable to the whole country, but the position of existing senior staff should not be prejudiced. With regard to financial arrangements generally, it is stated that at present the local authorities pay for the cost of running the courts, but they receive the fees and some of the fines. The result is that in some areas the local authority has a surplus which goes to reduce the rates, whereas in other areas the local authority has to meet a deficit. On the figures of 1937–38, over the country as a whole, the local authorities had to meet a deficit of £182,000. Out of the receipts of the courts the Exchequer takes £380,000 in fines for road offences, whereas the only Exchequer expenditure directly upon the administration of justice is the provision of some £58,000 a year for metropolitan police magistrates. If the whole of the fees and fines had been applied to meet the cost of the courts, there would, in 1938, have been a surplus of about £140,000. The reforms that the committee propose, it is said, will increase expenditure on the courts. It is recommended that justices in large boroughs and the magistrates courts committees elsewhere should prepare estimates of the expenditure on salaries, buildings, and so on, and submit the estimates to the Home Office for approval. All fees and fines should be paid into the Exchequer, but the Exchequer should distribute an equivalent of the amounts so received among the local authorities, according to a suitable formula. If the total of fines and fees is sufficient to meet the approved expenditure, then no cost will fall on the local authorities. If fines and fees fall short of the total required, the deficit is to be borne partly by the local authorities and partly by the Exchequer. As to salaries, it is said that at present

justices' clerks are paid an inclusive salary, out of which they must pay their assistants and other disbursements of their office. This system is indefensible and has been abandoned in some boroughs and divisions through appropriate administrative action by the justices. The committee propose a personal salary for the clerk, and separate payments for the salaries of his staff and other expenses; the clerk's personal salary, it is said, should cover all the work that he does and there should be no separate remuneration for him as collecting officer. The separate office of collecting officer should be abolished, and the duties should be regarded as part of the work of the clerk. The superannuation scheme at present applicable is that of the Local Government Superannuation Act, 1937. The committee would prefer a separate non-contributory scheme for justices' clerks and their assistants, but recommend that if the local government scheme is to be used, various additions should be made so as to provide superannuation for all clerks and all whole-time assistants. They propose a retiring age of seventy-two for clerks and sixty-five for their staff. It is also suggested that there should be a compulsory audit of all the accounts of justices' clerks. At present some local authorities do a certain amount of auditing, and it is suggested that this should be made general. The report ends by pointing out the urgent need for consolidation and simplification of the law relating to summary jurisdiction, and proposes the setting up of a Rule Committee to deal with questions of procedure.

"Intoxicated" and "Drunk."

FINE distinctions between the meanings of everyday words are not uncommonly drawn in English courts, but possibly lawyers in this country may envy the power of their brethren across the border to define distinctions in clear terms, as exemplified in *Keith* v. *Bell*, reported in 1944, *Scots Law Times*, p. 31 (issue of 26th February). The question was there discussed as to the meaning of the words "in a state of intoxication" on a case stated for the opinion of the High Court of Justiciary after a magistrate had found the appellant guilty of the offence of being in a state of intoxication on his licensed premises, contrary to his public house certificate and the Licensing (Scotland) Act, 1903, s. 53. The appellant was found outside the public house, about to close it, and apart from the facts that he staggered a little, that his breath smelt of alcohol, that his tongue was furred and his eyes bloodshot, and that his speech was thick and argumentative, he was in full possession of his faculties. It had been his afternoon off, and he had had three "nips" of whisky and three glasses of milk stout. The magistrate fined him £1, and the High Court considered that he was entitled to convict, as they had no jurisdiction to interfere unless it was plain that the wrong test had been applied or that the evidence on which the magistrate proceeded was palpably insufficient to justify the conclusion which he had reached. All the members of the court found the case "narrow and difficult." The Lord Justice-Clerk said that his view was that the words "state of intoxication" *prima facie* suggested a condition graver and more extreme than that which was suggested by such words as "drunk" or "under the influence of drink." LORD MACKAY agreed, and said that "the publican must be in that befuddled state in which if he found a customer he must refuse him any more excisable liquor." LORD JAMIESON said that the toxic effect of alcohol varied in the case of different individuals, and the question was one of degree. We respectfully agree, but would only add that if it is hopefully sought to use this case as a "persuasive" authority in defending a charge in an English court of being "intoxicated" while driving a hackney carriage contrary to s. 61 of the Town Police Clauses Act, 1847, some disappointment may result, as *Keith* v. *Bell* does not seem to embody any principle which it would be wise to extend generally.

The National Health Service.

BOTH Parliament and the press have now added their quota of welcome to the Government proposals for the establishment of a new health service. Debates commenced almost simultaneously on 16th March in both the House of Lords and the Commons. In the Lords the Minister of Reconstruction spoke as one who had taken some part in the early movement to try to establish dental clinics in this country. He characterised the new plan as the greatest single advance that had ever been made in this country or in any other in the service of public health. It was not a free scheme. All would pay, through taxation and local rates, for the services of all, and they therefore had a right to demand that they should be good services. LORD MORAN regretted the absence of detail, particularly on the consultative service. LORD NATHAN pointed out that the excellent White Paper of 1944 was built upon the foundations laid by that great man, now a venerable figure, LLOYD GEORGE, in 1911. On the question of finance, LORD NATHAN said that too much was being put upon the local authorities. He was not asking that there should be reorganisation now, but it could not be postponed very long without the whole structure of reconstruction collapsing. His lordship described the White Paper as a milestone on the road to social security. VISCOUNT SAMUEL also welcomed the plan, while LORD DAWSON OF PENN called it "a bold effort," but warned the House against the consequences of applying bureaucratic treatment to an individualistic profession like that of medicine. LORD GREVILLE also feared the effect of bureaucratic treatment on the voluntary hospitals. In the Commons Mr. WILLINK pointed out that there must be no direction of medical practitioners, but there must be some measure of control. Like LORD WOOLTON in the Lords, Mr. WILLINK also emphasised that the scheme was not free, but must be paid for by all out of taxation and rates. On the basis of Sir WILLIAM BEVERIDGE'S suggestion of a contribution of £40,000,000 out of the insurance fund towards the health service, he said that on a rough estimate 27 per cent. of the cost of the service would be contributory and 36 per cent. would be met by taxation and 36 per cent. by local rates. There was to be no regimentation of doctors and there was no intention of establishing a full salaried state medical service. Sir ERNEST GRAHAM LITTLE'S claim that the medical profession was intensely resentful of the scheme called forth an emphatic disclaimer from Dr. EDITH SUMMERSKILL. Dr. HADEN GUEST said that he did not know of any section of the medical profession for which Sir ERNEST GRAHAM LITTLE could speak with authority, and felt certain that the White Paper proposals were acceptable in outline to the medical profession. Mr. A. G. WALKDEN welcomed the White Paper on behalf of the Trades Union Congress and said that "regimentation" and "bureaucracy" were bogey words. Miss FLORENCE HORSBRUGH, Parliamentary Secretary to the Minister of Health, made the point that, instead of people paying a few pence to this and a few pence to that, there would be unified contributions through the Exchequer. Mr. GREENWOOD said that doctors, like lawyers, were a shining example of 100 per cent. trade unionism and a little healthy self-discipline would be all to the good. Sir H. MORRIS-JONES said that the White Paper was the ablest State Paper he had ever read, and Mr. SILKIN said that the plan was a compromise attempt to reconcile conflicting points of view. The chorus of welcome for the plan should encourage the Government to take speedy steps towards its implementation.

Recent Decisions.

In a case in the Divisional Court, on 13th March (the LORD CHIEF JUSTICE and HUMPHREYS and MACNAGHTEN, JJ.), it was held that there was no inherent jurisdiction in the Divisional Court to suspend the operation of the Solicitors Acts or rules pending an appeal to that court. The rules had been drafted in such a way as to give jurisdiction to the committee in the matter of suspending the carrying out of directions given to the registrar, and no power was given to the court to override their decision. The applicant was a solicitor who had been found guilty by the Disciplinary Committee of professional misconduct and whose name was ordered to be struck off the roll. His application was (1) to suspend the publication of his name in the *London Gazette*; (2) to suspend the entry and the order on the file open to public inspection; and (3) to suspend the making by the registrar of a note of the effect of the order against the name of the solicitor on the roll of solicitors.

In *Safford* v. *Safford*, on 13th March (*The Times*, 14th March), the President of the Probate, Divorce and Admiralty Division held that two periods of absence of a respondent from a mental home on trial, within the meaning of s. 55 of the Lunacy Act, 1890, which occurred within the five years immediately preceding the presentation of a petition for divorce based on incurable insanity, were sufficient to break the continuity of the five years' period of care and treatment required by statute to complete the ground for divorce, and that where there were such periods of absence in the five years' period a decree of divorce must be refused.

In *Associated Cinema Properties, Ltd.* v. *Metropolitan Borough of Hampstead*, on 16th March (*The Times*, 17th March), the Court of Appeal (SCOTT, GODDARD and DU PARCQ, L.JJ.) held that it was never true to say that a mere intention to occupy, in hypothetical circumstances which might never come into existence, was equivalent to occupation under 43 Eliz., c. 2, so as to make premises rateable. Consequently, where the respondents had taken a tenancy of some houses in order to have accommodation available for offices in the event of their present offices being unfit for use by enemy action, or in any event caused by the exigencies of their business, and had never in fact used the houses, it was held that they were never a rateable occupation.

In the *Steaua Romana* and the *Oltenia*, on 17th March (*The Times*, 18th March), the President of the Probate, Divorce and Admiralty Division condemned as prize two ships of Rumanian ownership, but refused to condemn certain wireless installations fitted in the ships, on the ground that, after the declaration of Rumania as an enemy country under the Trading with the Enemy Act, 1939, the Crown had entered into a fresh hiring contract with the owners of the apparatus. The grounds for the President's refusal were (1) the Crown had hired the apparatus and therefore the order to seize the ships must be taken to have impliedly excluded the apparatus; (2) the seizure was in any case inconsistent with the Crown's own contract.

Costs of Solicitor acting for a Trustee in Bankruptcy.

DUTY.

MR. JUSTICE HORRIDGE in *Re Lavey* [1921] 1 K.B. 344, at p. 354, said "Trustees and solicitors ought to know the legal position when they enter into the transaction." On the 1st October, 1940, r. 108A of the Bankruptcy Rules came into operation. It seems that this new rule is not generally known, and as a result difficulties have arisen in regard to the taxation of a number of bills of costs owing to the requirements of the rule not having been complied with.

STATUTORY AUTHORITY.

By s. 56 of the Bankruptcy Act, 1914, the trustee may (*inter alia*) "employ a solicitor or other agent to take proceedings or to do any business which may be sanctioned by the Committee of Inspection." The permission given by this section "shall only be a permission to do the particular thing or things for which the permission is sought in the specified case or cases."

By r. 108A of the Bankruptcy Rules "the Committee shall in each instance specify the maximum limit to the amount of costs to be incurred in such proceedings or business respectively and the trustee shall inform the solicitor of such limit before the employment begins: Provided that the Committee may, upon the application made by the trustee either before or within one month after the limit has been reached, increase the limit of costs to be incurred." This rule came into operation on the 1st October, 1940, and it expressly reserves to the committee the power to sanction or refuse any increase beyond the limit already resolved upon. It is the practice of the High Court to entertain an application under r. 386 of the Bankruptcy Rules for an extension of time for obtaining the committee's sanction to an increase of the limit, provided that good cause is shown and that the resolution of the Committee concerned did in fact specify a limit. The application must be supported by an affidavit setting out the facts and "the special circumstances" which purport to bring the case within r. 386. It would seem that a resolution of the committee which does not "specify a maximum limit to the amount of the costs to be incurred" is one which is irregular and not within r. 108A and consequently r. 386 does not appear to confer on the court the jurisdiction to correct this irregularity. The obtaining of the consent of the committee "is merely a provision for the protection of the estate and is not one which the respondent or the defendant in any proceedings by the trustee is entitled to avail himself of in answer to those proceedings" (Horridge, J., *Re Branson, ex parte The Trustee* [1914] 2 K.B. 701, 704).

EVIDENCE OF AUTHORITY.

By r. 360 the trustee "shall record all minutes, all proceedings had, and resolutions passed" at any meeting of the Committee of Inspection in the "Record Book." By r. 109 "a copy of the resolution or other authority sanctioning the employment and specifying the limit of the amount of costs to be incurred" must be produced to the taxing officer before taxing the bill. Hence it follows that the cautious solicitor will ask for a copy of the resolution as soon as he is instructed in order to see that the same complied with the requirements of r. 108A and when the limit fixed by the resolution is exhausted to at once request the trustee to obtain the necessary resolution to "increase the limit of costs to be incurred."

COSTS AGAINST TRUSTEE.

"Where there is a contest between the trustee and a person having claims against the estate it is not necessary and, as a general rule, not desirable, that the order which determines the contest should contain any direction as to the manner in which the costs of the trustee or costs which he is ordered to pay are to be dealt with as between the trustee and the estate. Such costs as have been properly incurred by a trustee will be allowed to him in due course; and the fact that, in a contest with another party, the trustee has been ordered to pay that party's costs in no way settles the subsidiary question whether or not he is to be recouped those costs out of the estate. The materials necessary to enable the court to form an opinion on the subsidiary question are usually not before the judge who determines the main contest" (Clauson, J., *Re Simms* (1929–1930), B. & C.R. 275). The following form of order was approved by the learned judge: "And this Court doth further Order that the costs of this Motion be taxed and the amount when taxed be paid by [here insert the name of the Trustee] but without prejudice to his right, if any, to be recouped out of the Estate of the said [here insert name of the Bankrupt] the Bankrupt."

TAXATION.

Where a trustee with the permission of the Committee of Inspection employs a solicitor to do particular business the taxation will be between solicitor and client and not as between solicitor and own client (see *Re Lavey* [1921] 1 K.B. 344). The court has power to order the re-opening of the taxation on the ground that it had not been carried out in accordance with the Act. "It is clear that neither the payment of the solicitors of the amount of the allocaturs, nor the audit of the trustee's accounts, nor the annulment of the bankruptcy prevents this court from having full jurisdiction to deal with the matter on the present application" (Swinfen Eady, L.J., *Re Geiger* [1915] 1 K.B. 457, followed in *Re Yeatman* [1916] 1 K.B. 780).

A Conveyancer's Diary.

Lord Kingsdown's Act.

THE Wills Act, 1861, commonly known as Lord Kingsdown's Act, is described in its title as "An Act to amend the law with respect to wills of personal estate made by British subjects." It does not affect the law relating to wills disposing of real estate. Its first two sections do not apply to foreigners, but s. 3 has on one occasion been held to do so. Section 1 deals with wills made outside the United Kingdom; s. 2 with those made within the United Kingdom. By s. 1 every will or other testamentary instrument made outside the United Kingdom by a British subject (wherever domiciled) shall as regards personal estate "be held to be well executed for the purpose of being admitted in England . . . to probate . . . if the same be made according to the forms required either by the law of the place where the same was made or by the law of the place where such person was domiciled when the same was made or by the laws then in force in that part of Her Majesty's dominions where he had his domicile of origin." Thus, if a British subject, born in Australia, dies leaving a will executed in Turkey at a date when he was domiciled in Spain, he can make a will dealing with English personal estate, which will be valid and will be admitted in England to probate, in the form required either by Australian or Spanish or Turkish law. The Act is enabling: before it, a foreign will had to be executed according to the law of the country where the testator was domiciled, not at the date of execution, but at the date of his death. A will so executed is still valid, because s. 4 provides that the Act does not render invalid a will which in its absence would have been valid, but the Act provides that other forms shall be valid as well.

The second section deals with the case where a British subject makes a will in a part of the United Kingdom where he is not domiciled. It is as follows: "Every will and other testamentary instrument made within the United Kingdom by any British subject (whatever may be the domicile of such person at the time of making the same or at the time of his or her death) shall as regards personal estate be held to be well executed, and shall be admitted in England and Ireland to probate, and in Scotland to confirmation, if the same be executed according to the forms required by the laws for the time being in force in that part of the United Kingdom where the same is made."

Any method of making a will which is valid under those sections is, of course, additional, in England, to the method of making a will in accordance with the Wills Act, 1837; and that method continues to be the only one of making a valid will of English realty. It is clear on the face of those sections that they relate only to the formalities necessary for making a valid will and not in any way to the effect of the will once it is admitted to probate.

Re Priest [1944] Ch. 58 (*ante*, p. 43), was a case on s. 2 of the Act. The testator left an estate consisting entirely of personal property. He died domiciled in England. He had made a holograph will dividing his estate equally between his daughter and his daughter-in-law. This document was made in Scotland and was written on a *Scottish* will form. By Scottish law a holograph will of personalty requires no attestation. But this will was apparently attested in the English manner by two persons, one of whom was the daughter-in-law's second husband. The will having been proved, the question arose whether the daughter-in-law lost her moiety of the estate under s. 15 of the Wills Act, 1837, by reason of the fact that her husband was an attesting witness.

Section 15 of the Wills Act is as follows: "If any person shall attest the execution of any will to whom or to whose wife or husband any beneficial . . . gift . . . shall be thereby given . . . such . . . gift . . . shall, so far only as concerns such person attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person or wife or husband, be utterly null and void." Section 15 is thus the converse of ss. 1 and 2 of Lord Kingsdown's Act: it relates to the effect of the will once it is admitted to probate and not to the formalities requisite for making a valid will. By later words in the section, indeed, such beneficiary is to be admitted as a witness to "prove the execution of such will, or to prove the validity or invalidity thereof."

In these circumstances the daughter-in-law tried to show that there were grounds for holding that s. 15 did not apply to this will. It was faintly argued that s. 35 of the Wills Act, 1837, was of assistance to her by providing that "this Act shall not extend to Scotland," where the will was made. The court had no difficulty in rejecting this suggestion: the effect of s. 35 is merely that the Act does not affect the testamentary law of Scotland. The substantial point argued was, however, that s. 2 of Lord Kingsdown's Act applied. On the footing that the testator was a British subject and made a holograph will of personalty in Scotland, it was said that the will would have been valid without attestation as a Scottish will, and in these circumstances also in England under s. 2, so that the attestation could and should be

ignored. This submission also failed. Substantially, Bennett, J., held that the will was intended to be and was an English will; it was executed in a form that was perfectly valid under the Wills Act, 1837; that being so, there was no need to look at the Act of 1861, so that the whole argument was based on a fallacy. Clearly, this position is correct on principle: the fundamental statute is that of 1837; that of 1861 merely validates certain wills which would, or might, have been invalid under the principal Act.

The main argument discussed in the judgment was drawn from *Re Limond* [1915] 2 Ch. 240. That was a case of a "soldier's will," which happened to have had attesting witnesses, one of whom was a beneficiary. It was there held that the testator had meant to make a "soldier's will" so that the attestation was unnecessary. As Bennett, J., pointed out, the decision in *Re Limond* was based on the finding of fact that the testator intended to make a will privileged under s. 11 of the Wills Act. Once one reaches that point and the will is held valid as a privileged will, the position is quite different, because s. 11 allows members of the privileged classes to dispose of their personalty as they might have done before the passing of the Act of 1837. Thus, in effect, s. 15 is excluded. It seems reasonably clear, however, that, apart from an express statutory privilege, the fact that a person witnesses a will, even if the attestation is otiose, brings s. 15 into effect. Thus, in *Cozens* v. *Grout*, 21 W.R. 781, the person in question was one of three witnesses, so that the will could still have been admitted to probate if his attestation had been ignored, but s. 15 was held to apply. There have been a certain number of cases, one of which was *Kitcat* v. *King* [1930] P. 266, where the court has admitted, and accepted, evidence that the signature of a beneficiary appearing on a will was not meant to testify that the signatory was a witness of the will. (In *Kitcat* v. *King* the notion was that the signature testified the beneficiary's approval of the contents of the will.) But no such point was argued in *Re Priest*, and it seems most unlikely that it would have succeeded.

Bennett, J., had, therefore, to deal with the will of a domiciled Englishman, made in the manner which the Wills Act, 1837, requires for an English will. It was true that the will was made in Scotland on a Scottish will form. But, as he said, it was "impossible . . . to conclude that the testator . . . intended to make an unattested holograph will disposing only of personal property which was to have legal operation and effect by force of the combination of the law of Scotland . . . and s. 2 of Lord Kingsdown's Act. It would be wrong for me . . . to conclude that the attestation of the testator's signature by two witnesses was a mere matter of chance or coincidence." That being so, s. 15 plainly applied.

But, suppose the learned judge had been faced with slightly different facts so that he had been constrained to hold that s. 2 of Lord Kingsdown's Act did apply, and suppose also that a beneficiary's husband was a witness; what then would the position as to s. 15 have been? Let us assume that the circumstances had been exactly the same, save that the daughter-in-law's second husband had been the only witness. Then the will could not have been valid under the 1837 Act and resort to s. 2 of the 1861 Act would have been necessary. That section would validate an unattested holograph will made in Scotland and, presumably also, a holograph will with one witness. But, in a sense, it would have been "chance or coincidence" that there was a witness at all. But it appears to me difficult to say that s. 15 would have been excluded, unless further evidence on the lines of that in *Kitcat* v. *King* could have been adduced. Section 15 appears to be so worded as to be of general application. It nullifies beneficial gifts to persons who "attest the execution of any will" or their spouses. For this purpose it does not matter whether the attestation was necessary to the validity of the will. For s. 15 is not a matter for the Probate Court, but for the court of construction and administration. The exception discussed in *Re Limond* is *sui generis* and depends on the circumstance that wills privileged under s. 11 of the Wills Act are governed by the rules in force before that Act: thus, s. 15 is irrelevant to them.

THE SOLICITORS' LAW STATIONERY SOCIETY, LIMITED.

The report of the Directors of the Solicitors' Law Stationery Society, Limited, for the year 1943 states that there was a considerable improvement both in sales and in profit, the profit for the year being £18,409 against £5,315 in 1942. As a consequence the Directors recommend that a dividend of 5 per cent. per annum, less income tax, be paid in respect of the year. Bonuses will, in accordance with the Articles, be payable to customers and staff. They also recommend the provision of £9,000 for future taxation, the addition of £500 to the Women's Pension Reserve, the writing off of £3,500 from the amount standing in the balance sheet as value of freehold premises, and the carrying forward of the sum of £12,382, against £15,168 brought forward from the previous year.

The annual meeting will be held at 31, Breams Buildings, Fetter Lane, E.C.4, on Tuesday, 28th March, at 12 o'clock. A report of the proceedings at the meeting will appear in next week's issue.

Notice is also given of an Extraordinary General Meeting to be held at the same address on Tuesday, 18th April, at 12.30 o'clock, for the purpose of altering the Articles of Association.

Landlord and Tenant Notebook.

Fixed Terms and the Increase of Rent Acts.

I RECENTLY heard the proposition advanced (and warmly defended) that when a tenant of controlled property holding for a fixed term remains in possession on the expiration of that term and pays rent as before, the result is, notwithstanding the Rent, etc., Restrictions Acts, a tenancy from year to year.

The short answer to this contention is *Felce* v. *Hill* (1923), 39 T.L.R. 673 (C.A.). But the proposition was founded on an over-estimate of the strength of a well-established rule of common law, which is worth examining; and it will incidentally be seen that *Felce* v. *Hill* does not (as others have thought) lay it down that any tenant remaining in possession in the circumstances outlined becomes a statutory tenant.

Essentially, the rule is but a corollary of the principle expressed by the maxim *omnia rite praesumuntur acta*. Someone occupying someone else's land is not to be found guilty of trespass if there is any other explanation; mere consent at least gives him a tenancy at will, but very little more is necessary to make him a tenant from year to year. Thus in *Bowe's* case (1646), Aleyn, 4, quarterly payments by an ex-tenant holding over after a term of years made him a tenant at will. But in *Right d. Flower* v. *Darby* (1786), 1 T.R. 159, we find Buller, J., speaking of "the rule of law which construes what was formerly a tenancy at will into a tenancy from year to year." And in *Hyatt* v. *Griffiths* (1851), 17 Q.B. 505, the only question argued was whether a particular covenant in a four years' lease which had expired as long ago as 1843 was an implied term of the yearly tenancy which had admittedly come into being when the tenant held over. *Kelly* v. *Patterrson* (1874), L.R. 9 C.P. 681, states the rule in these terms: "Wherever a tenancy for years comes to an end, either by efflux of time or by the death or end of title of the lessor, so that either he or his representative, or any independent owner of the demised hereditament, can without notice eject the tenant, and the person entitled to eject leaves the tenant in possession, and receives rent from him without explanation or stipulation, the person receiving the rent is to be assumed to have created a tenancy upon the terms on and which the tenant held in the demise originally made to him; and the holding to be presumed is as of a tenancy from year to year according to the former holding of the tenant."

But this clear statement also indicates the limits of the rule. For the attempt to apply it to the case in the proposition is frustrated when one comes to the requirement "so that . . . he . . . can without notice eject the tenant." That, of course, is exactly what the landlord of controlled premises cannot do; so that even if he "receives rent without explanation or stipulation" he is not within the rule as stated.

As Scrutton, L.J., put it in *Felce* v. *Hill*, *supra*: "Before the Act was passed, when a tenant held over, the landlord could turn him out before he received any rent. The Act having created that state of things . . . quite a different inference was to be drawn from the fact that the landlord received rent. The whole foundation of the argument broke down . . ."

Felce v. *Hill* arose out of a notice to increase rent, within the statutory limit. The plaintiff had let a dwelling-house to the defendant for a term of three years at a yearly rent payable quarterly. For some two years after term expired the defendant remained in possession, paying the same rent; the notice of increase having been ignored, the action was brought for rent. The defence was based on s. 3 (1) of the 1920 statute: "Nothing in this Act shall be taken to authorize any increase of rent except in respect of a period during which, but for this Act, the landlord would be entitled to possession": i.e., the contention was that six months' notice, expiring with an anniversary of the tenancy, was the minimum. This argument was rejected, on the lines indicated, by county court, by both judges of the Divisional Court, and by all three members of the Court of Appeal.

But it is of some importance to note that the payment and acceptance of rent were, to use the words of Lush, J., "perfectly colourless." What the decision does imply is that if that is so the inference should be that the tenant is one "who by virtue of the provisions of this Act retains possession of etc.": s. 15 (1) of the 1920 statute (conditions of statutory tenancy). The mere facts that one finds a tenant in possession of and paying the old rent for the controlled premises after term expired do not amount to conclusive evidence that he has claimed the protection offered him. He or the landlord may be able to prove some conduct from which the other inference could be drawn; and it may suit one of them to have such inference drawn. The tenant may appreciate that though the power to increase rent at short notice is far less wide under the 1939 Act than in the case of "old control," it still exists; and it may be that socially a contractual tenant considers himself a cut above a statutory tenant.

It is true that the earlier Acts, at all events, being limited to low rental dwellings, will have affected far more weekly and other periodic tenancies than fixed term lettings. But it would not be fair to say that the draftsmen overlooked the latter variety, and by the time the old "principal Act" of 1920 appeared on the statute book it is clear that they were fully conscious of its existence. For s. 15 (1), from which I have already quoted, provides that the statutory tenant "shall be entitled to give up

possession of the dwelling-house only on giving such notice as would have been required under the original contract of tenancy, or, *if no notice would have been required*, on giving not less than three months' notice." Again, landlords whose tenants hold or held for fixed terms will normally not be affected by the provisions about rent books in s. 14 of the 1933 Act (notice stating *i.e.*, the standard rent) and s. 6 of the 1938 Act (rent-books must be supplied when rent payable weekly), which imply the existence of and applicability of the Acts to some other tenancies at least. Undoubtedly, the 1939 Act has brought a large number of houses let for fixed terms within the scope of the legislation, including many which never expected, at the times of the grants, to become "controlled."

To-day and Yesterday.

LEGAL CALENDAR.

March 20.—On the 20th March, 1858, at the Shrewsbury Assizes, William Davies was condemned to death for the murder of an old woman named Ann Evans who lived at Wenlock. She was reputed to be a witch and, through the fear of her powers, exercised great influence over the prisoner, who was her servant. She went by several names, and apart from her supposed magical practices, her reputation was bad. She was subject to fits of passion, and during one of these she provoked Davies to knock her down; then terrified of her curses, should she recover, he stabbed her in the neck and fled. So firmly established was her supernatural reputation, that the mother of a little girl who gave evidence would not allow her to stand alone in the witness-box, lest the evil influence might still be powerful. The death sentence was afterwards commuted.

March 21.—At the Grenoble Assizes on the 21st March, 1861, Monsieur Benjamin Reynaud, a venerable-looking man, sixty-six years old, well educated and enjoying an ample fortune, was tried for the murder of his daughter whom he had stabbed to death. He had been incited to the deed by a contemptuous expression used in a note to her from one of his mistresses. He also shot a young man with whom she had an assignation and then tried to kill himself. Found guilty with extenuating circumstances, he was condemned to life imprisonment.

March 22.—Giovanni Kalabergo was an Italian who left his country in early life and settled at Banbury, where his industry and good nature enabled him to build up an excellent business as a jeweller and silversmith. In October, 1851, his nephew Gulielmo came over to help him, and about twice a week they used to drive round the neighbourhood in a light spring cart to visit customers. One evening in January, a carrier found the cart unattended on the road near Williamscott and not far off was discovered the dead body of Giovanni shot through the head. Neither his pockets nor the boxes in the cart had been rifled. Later on the nephew was found wandering about in a distressed condition; he told a story of the cart having been waylaid by three robbers. It was discovered that he had lately bought a pistol, a bullet-mould and some gunpowder; the pistol was later recovered from a muddy ditch. Other circumstances helped to bring the crime home to him and he was convicted of the murder. After admitting his guilt he was hanged at Oxford on the 22nd March, 1852.

March 23.—For some years, Mr. Ludlow, a Birmingham cattle dealer, had slept in room No. 17 at the Angel Inn whenever he stayed at Ludlow on business, but when he arrived there on the 19th August, 1840, he found it was already occupied by a commercial traveller named William Mackreth, and he himself had to take No. 13. He had a lucky escape, for that night Mackreth awoke to find someone in the act of cutting his throat. Though badly wounded, he was able to struggle from his bed in the darkness, call for help and get downstairs. When the circumstances of the crime were investigated it appeared that a young man named Josiah Mister had attached himself to Mr. Ludlow at Shrewsbury a few days before, had found out that he meant to go to the Ludlow Fair and had contrived to fall in with him again at the Angel Inn. Intending to rob him, he hid under the bed in room No. 17, but in the event he attacked the wrong man. He was tried on the 23rd March, 1841, and convicted of attempted murder. He was hanged at Shrewsbury, protesting his innocence till the last. The landlord of the inn was so affected that he went mad and died soon after.

March 24.—In March, 1826, Edward Gibbon Wakefield, being minded to make his fortune by marrying an heiress, decoyed fifteen-year-old Ellen Turner from her boarding school and by telling her a tale that her father was ruined financially, persuaded her that she must marry him at Gretna Green. Only on this condition, he said, would his uncle, whom he represented to be a Kendal banker, consent to save her father's credit. In fact, her father, who had large property in Cheshire, was in no difficulties at all. On the 23rd March, 1827, Wakefield and his brother were tried and convicted at the Lancaster Assizes of unlawfully taking Ellen Turner away and causing her to contract matrimony. On the 24th March, they pleaded guilty to abduction. Subsequently they were sentenced to three years' imprisonment. In gaol Edward Gibbon Wakefield began to study the problems of colonisation and prepared a historic career for himself. His work brought about a fundamental revolution in the administration of Australia, and it is thanks to him that New Zealand became a British possession.

March 25.—The *peine forte et dure* remained until the eighteenth century the judicial method of dealing with persons accused of felony who refused to plead "Guilty" or "Not Guilty." It began in theory as rigorous imprisonment and developed into pressing to death; the prisoner was laid on his back on the bare floor under a door, on which was placed an increasing weight of iron until he was crushed. Under this law a horrible scene was enacted at York on the 25th March, 1586. Mrs. Margaret Clitherow was charged at the Guildhall with harbouring Roman Catholic priests and assisting at Mass. For fear her children should be forced to give evidence at her trial she steadfastly refused to plead; if they told the truth they would know they were the cause of her death; if they lied they would commit perjury. Therefore she chose to be pressed to death. She was fifteen minutes expiring, crying at the last "Jesu, Jesu, Jesu, have mercy upon me!"

March 26.—On the 26th March, 1655, "Mr. Patrick Maxwell, ane arrant deceiver, was brocht to the Mercat Croce of Edinburgh, quhair a pillorie was erectit, gairdit and convoyed with a company of sodgeris; and their, aftir one full houris standing on that pillorie, with his heid and handis lyand out at hoilis cuttit out for that end, his rycht lug was cuttit of; and thaireftir caryit over to the toun of St. Johnnestoun, quhair ane uther pillorie was erectit, on the quhilk the uther left lug was cuttit of him."

THE ANIMAL'S JUDGMENT.

At Manchester recently in the course of a case arising out of the theft of a hen, it transpired that the bird in question, being indistinguishable from those of the accused, had been left to indicate her proper master; all had been taken into a field and she had gone straight to the prosecutor's hen cote. That recalls the story of Sir Thomas More and the beggar woman's little dog which she had lost and which had been sold to Lady More. When the woman traced her pet "she came to complain to Sir Thomas as he was sitting in his hall that his lady withheld her dog from her. Presently my lady was sent for and the dog brought with her; which Sir Thomas taking in his hands, caused his wife, because she was the worthier person, to stand at the upper end of the hall and the beggar at the lower end, and saying that he sat there to do everyone justice, he bade each of them call the dog, which when they did, the dog went presently to the beggar, forsaking my lady. When he saw this, he bade my lady be contented, for it was none of hers; yet she, repining at the sentence of my Lord Chancellor, agreed with the beggar and gave her a piece of gold, which would well have bought three dogs, and so all parties were agreed, everyone smiling to see his manner of inquiring out the truth."

Our County Court Letter.

Refusal of Leave to Distrain.

IN *Slater* v. *Box & Davies*, at Aberystwyth County Court, an application was made for leave to distrain upon No. 2 flat and No. 3 flat, Clifton House, 68, Marine Terrace. The plaintiff became the owner in 1943, and his case was that the original owners had kept the premises as a boarding house for twenty-five years. The first letting was in June, 1941, to one Odell, at a rent of £8 13s. 4d. a month, plus £23 a year for rates. Odell had the tenancy of the whole house, which was then adapted into three flats. The top two were let at 30s. per week, plus 2s. for electric light. The top flat was occupied by the second defendant and the middle flat by the first defendant. An agreement was signed by the second defendant only. Both parties, however, paid rent regularly for a time, and then withheld rent. In September, 1943, Odell surrendered his tenancy to the plaintiff. No notice was given to the tenants, and leave to distrain was required in lieu of rent due. The defendants' case was that the rent was withheld owing to a *bona fide* dispute as to the amount legally due. No new agreement had been made, and no rent book had been furnished giving particulars of the rent due. His Honour Judge Temple Morris, K.C., held that the plaintiff was a step too far ahead. It would be necessary to ascertain the standard rent before obtaining leave to distrain. The application was dismissed, with costs to the defendants.

Fire Prevention Expenses.

IN four cases at Witney County Court (*List & Co.* v. *Ovens, Scarrott, Cook and Brooke*) the respective claims were for £4 2s. 6d., £8 17s. 4d., £4 15s. and £6 6s. The plaintiffs sued in a representative capacity on behalf of the members of a scheme (in pursuance of the Fire Prevention Orders) approved by the Witney Urban District Council. The amounts claimed were arrears of contributions towards the joint expenses of the scheme. The defences were that the forms had been signed without being read; that it was understood that the expenses would not exceed 6d. in the £; that there was more equipment than personnel to use it.

His Honour Judge Donald Hurst observed that the defendants had aired grievances which should have been ventilated elsewhere. Having signed the forms, the defendants were liable for the amounts claimed. Judgment was given accordingly with costs.

Right of Way to Farm.

IN *Francis* v. *Francis* at Trowbridge County Court, the claim was for damages for trespass and an injunction to restrain the defendant from using a road leading to a farm at Hawkeridge. The parties were cousins, and occupied neighbouring farms. The plaintiff's case was that old maps and sale catalogues from 1809 onwards showed that the disputed road was his property. The defendant's case was that the road was a public right of way. His Honour Judge Kirkhouse Jenkins, K.C., held that there was no evidence to support the defendant's contention. Judgment was therefore given for the plaintiff for nominal damages. It would be churlish, however, for the plaintiff to prevent the defendant from using the road. A solution might be for the defendant to pay a shilling a year by way of acknowledgment of the plaintiff's title.

Decisions under the Workmen's Compensation Acts.

Epileptiform Fits.

IN *Timmins* v. *Co-operative Wholesale Society, Ltd.*, at Dudley County Court, the applicant's case was that on the 8th January, 1942, she had fallen from a truck. The resulting head injury had rendered her unconscious for a considerable period. She was totally incapacitated to the 2nd February, 1943, when she returned to work. Frequent absences occurred, however, including one for the period from the 4th August to the 7th September, in respect of which compensation was claimed at 28s. 2d. per week. The applicant was still subject to fits, which were either organic, traumatic or functional, i.e., due to the shock of the accident. They had not a hysterical basis, as hysterical persons seldom hurt themselves. The applicant, however, had once fallen on the fire and had sustained burns. The respondents' case was that the applicant had recovered from the effects of the accident. All she was now suffering from was an anxiety neurosis. His Honour Judge Caporn held that the applicant suffered from fits with a functional basis, due to the accident. An award was made of the amount claimed, with a declaration of liability and costs.

Scarlet Fever not an Accident.

IN *Barker* v. *Rotherham Corporation* at Rotherham County Court an award was claimed of £1 4s. 11d. a week from the 3rd December, 1942, to the 18th January, 1943. The applicant had worked as a laundress for three days a week at the Badsley Moor Lane Isolation Hopsital. Part of her duty was to go into the scarlet fever ward and sort dirty linen. Having contracted the disease herself, she contended that this constituted an accident arising out of and in the course of her employment. This was denied by the respondents, whose case was that there were many cases of a similar type in the borough at the relevant period. The applicant might therefore have caught the illness outside the hospital. Judgment was given for the respondents, with costs. Compare *Martin* v. *Manchester Corporation* (1912), 28 T.L.R. 344, in which a porter, employed to clean the mortuary and attend the scarlet fever wards, contracted scarlet fever after cleaning out the mortuary. His claim for compensation failed, in the absence of evidence to connect the disease with the occasion in question.

Obituary.

MR. W. STUART NORWOOD.

Mr. William Stuart Norwood, barrister-at-law, died on Saturday, 11th March. He was called by Lincoln's Inn in 1923. He was a member of the Irish Bar (1896) and a King's Counsel (Ireland).

MR. F. A. WILSHIRE.

Mr. Frederick Allan Wilshire, barrister-at-law, and Recorder of Bridgwater, died on Sunday, 19th March, aged seventy-five. He was called by the Middle Temple in 1914.

MR. H. E. SMALE.

Mr. Harry Edgar Smale, solicitor, of Macclesfield, died on Thursday, 2nd March, aged seventy-six. He was admitted in 1891, and was a past president of the Macclesfield Law Society.

MR. P. TERRY.

Mr. Percival Terry, solicitor, of Messrs. Bainton & Terry, solicitors, of Beverley, Yorks, died on Monday, 6th March, aged eighty-two. He was admitted in 1890.

MR. W. F. VERNON.

Mr. William Frederick Vernon, solicitor, of Messrs. Vernon and Shakespeare, solicitors, of Oldbury, Worcs, died on Sunday, 12th March, aged ninety-one. He was admitted in 1882.

Points in Practice.

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29–31, Breams Buildings, E.C.4, and contain the name and address of the subscriber, and a stamped addressed envelope.

Bona Vacantia and the Crown.

Q. Testator was not married, but lived with a woman, by whom he had three children. By his will he gave to his son Frederick £56, to his daughter Millicent £56, and to his son Sydney £56. If Sydney should die before testator the money should go to his mother. The will was signed by the testator, but there was only one witness, so that it is not valid. The Treasury have now claimed the estate on the grounds that testator died intestate with no relatives. Had there been a second witness to the will it is clear the sons and daughter would have taken, but the Treasury refuses to recognise these children as kin of the testator. There are no other relatives, and the only assets are £171 in the bank. Can anything be done to dispute the Treasury's claim?

A. It is, we believe, competent to the Crown to make some provision out of the estate of the deceased for these illegitimate relatives. We suggest that our subscriber should apply to the Treasury for the necessary form of petition. See A. of E.A., 1925, s. 46 (1) (vi).

Cesser of Annuity—INCIDENCE OF ESTATE DUTY.

Q. A testator who died in the year 1899 bequeathed an annuity of £250 to his daughter during her life, and on her death the sum of £5,000 to be paid to her child or children attaining twenty-one years. Settlement estate duty was paid in respect of the above. The annuitant died in the year 1943, having had one child only, who has attained twenty-one years. Under s. 14 of the Finance Act, 1914, estate duty is now payable upon the value of the "slice" of the trust fund of which the income was sufficient to provide the annuity. This "slice" will exceed £5,000 in value, and so the rate of estate duty will be higher than would have been the case if it had been paid on £5,000 only. The will makes no mention whatever of death duties or of how they are to be paid or borne, and there are no qualifying words, such as "free of all deductions," in respect of the legacy of £5,000. We shall be obliged if you will advise us whether a proportionate part of the estate duty payable in respect of the "slice" will be deductible from the amount of the legacy. Of course, the settlement estate duty paid, together with interest thereon, will be deducted from the amount of the estate duty.

A. "Where a legacy is payable on the death of a life tenant or annuitant, out of the property thereby set free, the estate duty in connection with that death will always be a charge and apportionable accordingly. (*Berry* v. *Gaukroger* [1903] 2 Ch. 116; *Re Hicklin, Public Trustee* v. *Hoare* [1917] 2 Ch. 278.)" (Dymond's "Death Duties," 9th ed., pp. 144–5.) We suggest, then, that the legatee must bear the estate duty on £5,000 only, while the duty of the remainder of the "slice" will fall upon the residuary estate of which that remainder is the whole or a part only.

Power of Attorney—IMPLIED POWER OF SALE.

Q. Before going to live in India in 1924, A executed a power of attorney whereby she appointed her sister, B, to be her attorney for the purposes therein mentioned (*inter alia*): "(*a*) To invest any money either in the name of my attorney or in my own name in any investments whether authorised by law or not for the investment of trust funds and to vary such investments from time to time. (*b*) To execute and do in my name or otherwise all such acts, deeds, agreements and things as my said attorney may think proper for the purpose of giving effect to the powers hereby conferred and generally to manage all my concerns and affairs at her absolute discretion and as fully and effectually as I could do if I were present and acting in my proper person and without being liable to account for any act or default done or committed in good faith. (*c*) All whatsoever my attorney shall do or cause to be done in or about the premises I hereby covenant with my said attorney to allow ratify and confirm." The power of attorney does not, however, contain any clause giving the attorney, B, any specific power to sell A's property or investments. A, who is still in India, has written to her brother in England expressing a wish or request that he should sell her holding of stock in a certain English company. If A's brother acts on her letter and sells the stock, can the transfer thereof be validly and effectually executed by B as A's attorney, or would B be exceeding the powers given her by the instrument or acting outside its scope, in view of the absence of any specific power of sale contained in it? Or do clauses (*a*) and (*b*) give B an implied power to sell the stock and execute the transfer? It is not stated whether the proceeds are directed to be re-invested or sent out to A in India.

A. It is a matter for the particular company or bank at which the stock is registered whether the power would be accepted as extending to authorise a sale of the stock in question. The present writer can only say that he could not advise any company to register a transfer of the donor's stock which purported to be executed under this power, assuming that there is no other clause in the power which extends the authority.

Notes of Cases.

COURT OF APPEAL.

In re **Osmund; Midland Bank Executor and Trustee Co., Ltd. *v.* Attorney-General.**

Lord Greene, M.R., MacKinnon and Luxmoore, L.JJ. 3rd February, 1944.

Will—Construction—Bequest "to the medical profession for the furtherance of psychological healing"—Whether charitable.

Appeal from a decision of Bennett, J. (87 SOL. J. 447).

The testatrix by her will dated the 1st August, 1942, after appointing the plaintiff company to be her executors and trustees, provided as follows: "I give devise and bequeath all my real and personal estate to the company, upon trust in their absolute discretion to apply the same to the medical profession for the furtherance of psychological healing in accordance with the teaching of Jesus Christ." The testatrix died on the 27th September, 1942. By this summons the plaintiffs asked whether this gift was a gift upon a valid and effectual charitable trust. Bennett, J., held that the bequest was not a bequest wholly for charitable purposes and the gift was accordingly invalid, the residue passing to the next of kin. The Attorney-General appealed.

LORD GREENE, M.R., said that it was sufficient to destroy the charitable nature of the gift if, on its true construction, it was possible for those administering the property to go outside the scope of charity. The sole question was whether the language used by the testatrix made the gift obnoxious to that rule. It was not disputed that medical education was a good subject-matter of charity and that medical research and the general improvement of the medical art was a good subject of charity. They were concerned here with a particular branch of the medical art, namely, psychological healing. He could not read the qualification put on the gift as meaning more than the psychological healing was to be limited to healing of a character in conformity with the teaching of Jesus Christ. It put a limit on the psychological healing which it was permissible to consider, but it did not destroy the charitable quality if it were charitable, nor did it render the gift bad for uncertainty. The meaning of words used for "the furtherance of psychological healing" was for "the furtherance of the art of psychological healing" and any application of the funds outside the bounds of that phrase would be contrary to the trust. Such healing might be furthered by the care and treatment of some particular case. The mere fact that an individual suffering from a disease benefited by the treatment which he received did not mean that the study of the disease in treating that patient was outside a charitable purpose. One of the principal ways in which diseases could be studied and the art of healing furthered was by treatment. Any application of the funds which was not directed to the furtherance of the art of psychological healing would be a breach of trust. For instance, if the trustees provided a sum of money for the mere object of curing an individual without reference to the art of healing in general. The appeal must be allowed.

MACKINNON and LUXMOORE, L.JJ., agreed.

COUNSEL: *The Solicitor-General* (Sir David Maxwell Fyfe, K.C.), and *Danckwerts; A. Guest Mathews; Winterbotham.*

SOLICITORS: *Ridsdale & Son; Herbert Smith & Co.; Treasury Solicitor.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re **Whitby, deceased; Public Trustee *v.* Whitby.**

Lord Greene, M.R., MacKinnon and Luxmoore, L.JJ. 4th February, 1944.

Will—Construction—Bequest of "personal chattels"—Whether uncut diamonds pass—Codicil including jewellery "now" deposited at a safe deposit—Whether codicil speaks from death—Wills Act, 1837 (1 *Vict., c.* 26), *s.* 24—*Administration of Estates Act,* 1925 (15 *Geo.* 5, c. 23), *s.* 55 (1) (*x*).

Appeal from a decision of Uthwatt, J.

The testator by a first codicil to his will gave to R "all the residue of my personal chattels as defined by s. 55 (1) of the Administration of Estates Act, 1925," with certain specified exceptions. By a fourth codicil, dated the 13th June, 1940, he provided, "I exclude from the bequest of all the residue of my personal chattels . . . bequeathed to my niece R all articles of jewellery and other chattels and effects belonging to me and which are now deposited for safe custody at the M Safe Deposit Company and I bequeath the said articles of jewellery and other chattels and effects to my trustees to be held by them as part of my residuary estate." The testator purchased in 1941 some uncut diamonds, which at the time of his death on the 13th June, 1942, were at the safe deposit. This summons raised first, the question whether the bequest of "personal chattels" included uncut diamonds, and secondly, whether the fourth codicil excluded from the bequest of personal chattels articles which were deposited at the safe deposit at the date of the fourth codicil or which were so deposited at the date of his death. Uthwatt, J., held, first, that uncut diamonds did not pass, and secondly, that s. 24 of the Wills Act applied. The legatee appealed. The Administration of Estates Act, 1925, s. 55 (1) (*x*) provides: "'Personal chattels' mean . . . jewellery, articles . . . of personal use or ornament. . . ."

LORD GREENE, M.R., said, on the first point, that from the definition in the shorter Oxford Dictionary, it seemed clear that the word "jewellery" would cover jewels collectively and would cover gems sold by jewellers, just as it covered jewels made up into an article of ornament. If the answer to the question whether or not stones passed as jewellery was made to depend on whether the testator had had them made up into some article a quite irrational distinction would be introduced. The appeal on the first point should be allowed. On the second question, he said what they had to consider was whether a contrary intention was shown in the fourth codicil so as to exclude s. 24 of the Wills Act. If no such contrary intention appeared, these words of exclusion would cover only those articles which were in the safe deposit at the date of death. Looking at the codicil, it was not a gift pure and simple, but it operated as an exclusion from an earlier gift. The exclusion fell into three parts: (1) the description of the subject matter; (2) its location at the safe deposit; (3) a reference to the time of such location, namely "now." He could not see why, when a testator had defined the objects to which he had referred both by time and place, they should take out of the will the reference to time. On the argument of the respondent the effect would have been precisely the same if the word "now" had not been there. If the word "now" were not there, s. 24 would apply. He thought the testator was thinking of a particular time—namely the date of the codicil—just as he was thinking of a particular place. Therefore s. 24 did not apply, and the exception was limited to these articles which at the date of the fourth codicil were deposited in the place mentioned. It might be difficult to ascertain what those articles were. If it proved impossible to identify them, the exception from the legacy would fail to have any operation. It was for residue to show what was in fact deposited.

MACKINNON and LUXMOORE, L.JJ., agreed.

COUNSEL: *Harold Lightman; H. A. Rose; Wilfrid Hunt.*

SOLICITORS: *Fielder, Le Riche & Co.*, for *Biscoe-Smith & Blagg*, Portsmouth; *Gregory, Rowcliffe & Co.*, for *Marriott & Co.*, Manchester; *Gregory, Rowcliffe & Co.*, for *Bullock, Worthington & Jackson*, Manchester.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

CHANCERY DIVISION.

In re **A Debtor (No. 1 of 1943).**

Morton and Cohen, JJ. 1st February, 1944.

Emergency provisions—Bankruptcy—Petition founded on liability for costs—Jurisdiction to grant relief—Courts (Emergency Powers) Act, 1943 (6 & 7 *Geo.* 6, *c.* 19), *s.* 1 (1) (5).

Appeal from the registrar of Canterbury County Court.

On the 30th November, 1943, a receiving order was made on a creditor's petition founded on a debt arising out of a judgment for taxed costs. The registrar refused to stay the proceedings under s. 1 (5) of the Courts (Emergency Powers) Act, 1943, first, on the ground that subs. (5) did not apply to a debt arising out of a judgment for costs, and, alternatively, on the ground that the debtor's inability to pay was not attributable to the war. The debtor appealed.

MORTON, J., said that he saw no ground for excluding from the operation of subs. (5) a case in which the petitioning creditor's debt was a judgment for costs. The wording of the subsection was quite general. There still remained the question whether the debtor's inability to pay his debt was due to the circumstances directly or indirectly attributable to the war. It appeared that the debtor's inability to pay his debts was largely, if not entirely, caused by the fact that he chose to bring an action which the judge held to be ill-founded. He had wholly failed to bring himself within the provisions of subs. (5). That being so, the further question of the exercise of the discretion of the court did not arise, because, unless the debtor proved he was within subs. (5), the court had no discretion. The appeal must be dismissed.

COHEN, J., agreed.

COUNSEL: *J. P. Eddy*, K.C., and *P. B. Morle; G. F. Kingham.*

SOLICITORS: *Cohen & Cohen; Durrant Cooper & Hambling.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

Attorney-General *v.* Ulverston Urban District Council.

Simonds, J. 22nd February, 1944.

Local government—Appointment of councillor as clerk of council—No salary payable for twelve months—"Paid office"—Local Government Act, 1933 23 & 24 *Geo.* 5, *c.* 51), *s.* 122.

Motion for judgment.

The Local Government Act, 1933, by s. 122: "A person shall, so long as he is, and for twelve months after he ceases to be, a member of a local authority, be disqualified for being appointed by that authority to any paid office other than to the office of chairman, mayor or sheriff." The general purposes committee of the U Urban District Council advertised for a clerk to the council at a salary of £450 a year. J was a member of the council. He applied for the appointment, stating in his application that he would immediately resign from the council and would act in an honorary capacity for twelve months. The council appointed J to be clerk without salary. This action was brought by the Attorney-General, at the relation of three members of the council, for a declaration that the appointment of J was invalid and for an injunction.

SIMONDS, J., said the question was whether J had been appointed to a "paid office." In his judgment the office to which he had been appointed was a paid office and he had been appointed to a paid office within the meaning of the section, notwithstanding that he had agreed to act in an honorary capacity. The facts brought the case within the mischief of the Act. He would make the declaration of invalidity asked for.

COUNSEL: *Landau*, for *The Attorney-General.*

SOLICITORS: *Burton, Yeates & Hart; Hart Jackson & Sons*, Ulverston, Lancs.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY.

Wise *v.* Wise.

Hodson, J. 7th March, 1944.

Divorce—Nullity—Alleged incapacity to consummate the marriage—Different from allegation of mere failure to consummate—Particulars ordered of nature of incapacity.

Summons, adjourned into open court, for particulars of a plea contained in the petition of a female petitioner alleging that the respondent was, at the time of the ceremony of marriage, and had ever since been incapable of consummating the marriage. The respondent appealed against the registrar's refusal to order these particulars.

HODSON, J., said that it had been suggested that there was an inveterate practice of the court not to order such particulars, at any rate where the petitioner was a female, although it was conceded that a similar order had been made on a number of occasions when the position was reversed. There could be no distinction in principle between the two cases. It was to be borne in mind that in a suit for nullity on the ground of incapacity, medical inspectors were appointed by the court, whose report was available to both sides. This did not necessarily dispose of all those cases in which physical malformation was alleged to exist, and it was always open to the parties to call expert or other evidence in addition to that of the medical inspectors. There remained the cases where no incapacity was apparent and yet it was said to exist. These far outnumbered those where any malformation could be found. It had been argued that in law it was no more correct to order particulars of incapacity to perform a particular act than to order particulars of failure to do so. This was not well founded, since an allegation of incapacity to perform an act went further than a mere allegation of failure. In a suit for nullity based on this ground it was not unreasonable on the face of it for the person against whom the allegation was made to be put on his guard in order that he might be prepared at the trial with expert or other evidence to meet the case brought against him (*Phillips* v. *Phillips*, 4 Q.B.D., *per* Cotton, L.J., at p. 139). It had also been said that the parties themselves were the only possible witnesses who could deal directly with capacity or incapacity and that the expert witnesses, if any, must deal with the facts deposed to by the parties after considering those facts. This was not correct, for it might be that, having heard the evidence called on behalf of the petitioner, the respondent might find that he had not brought witnesses with the necessary qualifications to deal adequately with the evidence, and might be put in the position of having to seek an adjournment in order to apply himself for that purpose. It was further argued that it was impossible to comply with an order for particulars of the nature of the incapacity without pleading the evidence in support of the allegation. This was not well founded. In stating concisely the nature of the incapacity alleged there was no necessity to set out in detail the evidence to be adduced in proving the fact. The respondent was therefore entitled to the order asked for, and particulars of the nature of the incapacity alleged should be filed and delivered within fourteen days.

COUNSEL: *E. Holroyd Pearce; D. A. Fairweather.*

SOLICITORS: *Kenneth Brown, Baker, Baker; A. E. Hamlin Brown & Co.*

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

Parliamentary News.

ROYAL ASSENT.

The following Bills received the Royal Assent on 21st March:—

India (Attachment of States).
Naval Forces (Extension of Service).
Public Works Loans.
Reinstatement in Civil Employment.

HOUSE OF LORDS.

Beckett Hospital and Dispensary, Barnsley, Bill [H.C.].
Read First Time. [15th March.

Yorkshire Registries (West Riding) Amendment Bill [H.C.].
Read Second Time. [15th March.

HOUSE OF COMMONS.

Army and Air Force (Annual) Bill [H.C.].
Read First Time. [14th March.

Consolidated Fund (No. 2) Bill [H.C.].
Read Second Time. [15th March.

Education Bill [H.C.].
In Committee. [21st March.

War Legislation.

STATUTORY RULES AND ORDERS, 1944.

E.P. 240. **Administration of Justice** (Defence) Rules, Mar. 7.

No. 255. **Bankruptcy** (Solicitors' Remuneration) Rules, Mar. 9.

E.P. 234. **Control of Fuel** (No. 3) Order, 1942, General Direction (Standard of Lighting) No. 2, Mar. 2.

E.P. 273. **Food Rationing** (Cheese) Order, March 13, amending the Fats, Cheese, Sugar and Tea (Rationing) Order, 1943.

E.P. 201. **Imported Wireless Receiving Sets** (Labelling) Order, March 13.

No. 251. **Income Tax** (Employments) Regulations, March 9.

No. 268. **Supreme Court, Northern Ireland.** Order of the Lord Chief Justice of Northern Ireland, Feb. 29, amending Rule 8 of Order III and adding Rule 19A to Order LXV and Rule 102A to Order LXXXVIII of The Rules of the Supreme Court (Northern Ireland), 1936.

E.P. 243. **Upholstery Cloth** (Utility) Directions, March 10, under the Apparel and Textiles Order, 1942.

No. 266. **Wages Board** (Industrial and Staff Canteen Undertakings) Order, March 13.

PROVISIONAL RULES AND ORDERS, 1944.

Chancery of Lancaster (Solicitors' Remuneration) Rules, Mar. 1.

COMMAND PAPERS (SESSION 1943-44).

No. 6507. **Justices' Clerks,** Departmental Committee on (Chairman, the Rt. Hon. Lord Roche). Report. 27th Jan., 1944.

Rules and Orders.

S.R. & O., 1944, No. 255/L.11.

BANKRUPTCY, ENGLAND—GENERAL RULES.

THE BANKRUPTCY (SOLICITORS' REMUNERATION) RULES, 1944, DATED MARCH 9, 1944, MADE PURSUANT TO SECTION 132 OF THE BANKRUPTCY ACT, 1914 (4 & 5 GEO. 5, C. 59).

1. The following paragraph shall be added to Rule 103 of the Bankruptcy Rules, 1915,* as amended by the Bankruptcy Amendment (No. 1) Rules, 1932,† and the Bankruptcy Amendment (No. 2) Rules, 1936‡:—

"(4) The total which immediately before the tenth day of March, 1944, might have been allowed in respect of such business as is described in paragraph (3) of this Rule, and done on or after that date, shall be increased by twelve and a half per cent.:

Provided that this paragraph shall not affect the power of the Court to fix a sum to be paid in lieu of taxed costs under Rule 96 (1)."

2. These Rules may be cited as the Bankruptcy (Solicitors' Remuneration) Rules, 1944.

Dated the 9th day of March, 1944.

Simon, C.

I concur, *Hugh Dalton*,
President of the Board of Trade.

* S.R. & O. 1914 (No. 1824) I, p. 41. † S.R. & O. 1932 (No. 801) p. 127.
‡ S.R. & O. 1936 (No. 518) I, p. 129.

Notes and News.

Honours and Appointments.

It is officially announced that the King has approved the appointment of Mr. D. E. REUBEN to be a Judge of the Patna High Court in the vacancy caused by the retirement of Mr. Justice Rowland. Mr. Reuben was called by the Inner Temple in 1937.

The Lord Chancellor has appointed Mr. CHARLES WILLIAM BIRD, Liabilities Adjustment Officer at Croydon, to be, in addition, Liabilities Adjustment Officer at Brighton during the absence of Mr. F. J. P. Veale.

Notes.

A meeting of the members of The Auctioneers' and Estate Agents' Institute will be held at 29, Lincoln's Inn Fields, London, W.C.2, on Thursday, 30th March, 1944, at 3 p.m., when the President (Mr. Arthur Hollis) will deliver his presidential address.

An ordinary meeting of The Medico-Legal Society was held at Manson House, 26, Portland Place, W.1 (Tel.: Langham 2127), on Thursday, 23rd March, 1944, at 5 p.m., when a paper was read by Thomas Carthew, K.C., on "A Doctor as a Litigant."

The directors of the Legal & General Assurance Society, Ltd., announce that the offer made by the society to the shareholders of the Gresham Fire & Accident Insurance Society, Ltd., to purchase their holdings of ordinary shares at the price of £2 10s. per fully paid share and £1 5s. per partly paid share, excluding the dividend due to be declared in respect of the past year, has been accepted by holders of over 90 per cent. in nominal value of both classes of the shares affected, and the offer has therefore now become effective. Arrangements are being made to enable the purchase of the shares to be completed on the 1st April next.

Court Papers.

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION.

HILARY SITTINGS, 1944

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT I.	Mr. Justice SIMONDS.
Monday, Mar. 27	Mr. Farr	Mr. Reader	Mr. Hay
Tuesday, ,, 28	Blaker	Hay	Farr
Wednesday, ,, 29	Andrews	Farr	Blaker
Thursday, ,, 30	Jones	Blaker	Andrews
Friday, ,, 31	Reader	Andrews	Jones
Saturday, Apl. 1	Hay	Jones	Reader

DATE.	GROUP A. Mr. Justice COHEN *Witness*	Mr. Justice VAISEY *Non-Witness*	GROUP B. Mr. Justice MORTON *Non-Witness*	Mr. Justice UTHWATT *Witness*
Monday, Mar. 27	Mr. Andrews	Mr. Jones	Mr. Blaker	Mr. Farr
Tuesday, ,, 28	Jones	Reader	Andrews	Blaker
Wednesday, ,, 29	Reader	Hay	Jones	Andrews
Thursday, ,, 30	Hay	Farr	Reader	Jones
Friday, ,, 31	Farr	Blaker	Hay	Reader
Saturday, Apl. 1	Blaker	Andrews	Farr	Hay